



AF/IFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE


Applicants:	Wooh et al.	Examiner:	Horton, Yvonne Michele
Serial No.:	09/886,450	Group:	3635
Filed:	June 21, 2001	Confirm. No.:	5772
For:	BUILDING CONSTRUCTION AND METHOD USING TENSION SUPPORT MEMBERS	Docket No.:	MIT-117J

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage via first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on

December 23, 2004.

  
Wynne D. Jamis

REQUEST FOR WITHDRAWAL OF THE FINALITY  
OF THE NOVEMBER 16, 2004 OFFICE ACTION

Dear Sir:

Applicants request that the Examiner withdraw the premature finality of the Office Action mailed November 16, 2004 pursuant to MPEP 706.07(b) since the claims of the subject application when they were finally rejected were not drawn to the same invention claimed in the application prior to the entry of the Request for Continued Examination.

MPEP 706.07(b) provides that "The claims of a new application may be finally rejected in the first Office action in those situations where (A) the new application is a continuing application of, or a substitute for, an earlier application, and (B) all claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds and art of record in the next

Office action if they had been entered in the earlier application." (Emphasis added). Form paragraph 7.42.09 of 706.07(b) makes clear that the "earlier application" referred to in MPEP 706.07(b) refers to the application prior to the filing of the Request for Continued Examination. This form paragraph states: "Action Is Final, First Action Following Request for Continued Examination under 37 CFR 1.114: all claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114." (Emphasis added).

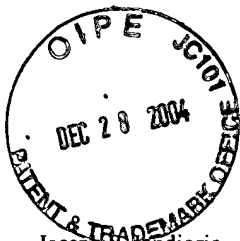
Thus, the finality of the November 16, 2004 Office Action was improper because all the present claims of the subject application are not drawn to the same invention claimed in the application prior to the submission of the Request for Continued Examination under 37 CFR §1.114. In an amendment submitted with the RCE, Applicants made amendments to claims 1, 5-11, 14-15 and 17-20 and added new claim 21. Also, in the November 16, 2004 Final Office Action the Examiner did not examine new claim 21 which is not drawn to the same invention as claims 1-20.

If for any reason this Response is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned or his associates, collect in Waltham, Massachusetts, at (781) 890-5678.

Respectfully submitted,



David W. Poirier  
Reg. No. 43,007



Joseph S. Iandiorio  
Kirk Teska  
Jason D. Shanske  
Thomas E. Thompson, Jr.  
Roy J. Coleman  
David W. Poirier

## IANDIORIO & TESKA

INTELLECTUAL PROPERTY LAW ATTORNEYS

260 BEAR HILL ROAD  
WALTHAM, MASSACHUSETTS 02451-1018

Tel: (781) 890-5678  
Fax: (781) 890-1150  
e-mail: admin@iandiorio.com  
web: www.iandiorio.com

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SUBJECT: Applicants: Wooh et al.  
Serial No: 09/886,450  
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For: BUILDING CONSTRUCTION AND METHOD  
USING TENSION SUPPORT MEMBERS  
Examiner: Horton, Yvonne Michele  
Group: 3635  
Confirm. No.: 5772  
Docket No: MIT-117J

Dear Sir:

Enclosed is a REQUEST FOR WITHDRAWAL OF THE FINALITY OF THE NOVEMBER 16, 2004 OFFICE ACTION in the subject Application.

If for any reason this REQUEST is found to be INCOMPLETE, or if at any time it appears that a TELEPHONE CONFERENCE with counsel would help advance prosecution, please telephone the undersigned or his associates, collect in Waltham, Massachusetts, at (781) 890-5678.

If any payment during prosecution is found to be incorrect, please charge any deficiency or credit any overpayment to my Deposit Account No. 09-0002. A copy of this letter is enclosed for use by the Finance Branch in the event that it is necessary to make any charge or credit to my deposit account.

In addition, pursuant to Rule 1.136(a)(3), the Office is hereby authorized to treat any future reply requiring an extension of time as incorporating a request therefor. Also, any request or Petition for an Extension of Time notwithstanding an inadvertent reference

Commissioner for Patents  
December 23, 2004  
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in the Petition to a shorter period of time is to be treated as requesting the appropriate length of time.

Kindly acknowledge receipt of the foregoing by returning the enclosed self-addressed postcard.

Sincerely,

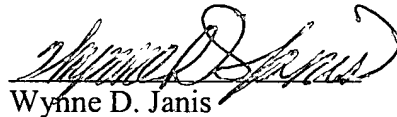


David W. Poirier  
Reg. No. 43,007

DWP:wj  
Enclosures

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Wynne D. Janis